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April 11, 2006

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 29, 2005

Case Number: TSO-0272

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter "the Individual") for continued access authorization. This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's suspended access authorization should be restored. For the reasons detailed below, it is my decision that the Individual's access authorization should be restored.

**I. APPLICABLE REGULATIONS**

The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."

An individual is eligible for access authorization if such authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). "Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." *Id.* See generally *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security" test indicates that "security-clearance determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990) (strong presumption against the issuance of a security clearance).

If a question concerning an individual's eligibility for an access authorization cannot be resolved, the matter is referred to administrative review. 10 C.F.R. § 710.9. The individual has the option of obtaining a decision by the manager at the site based on the existing information or appearing before a hearing officer. 10 C.F.R. § 710.21(b)(3). Again, the burden is on the individual to present testimony or evidence to demonstrate that he is eligible for access authorization, i.e. that

access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(a).

## **II. BACKGROUND**

The Individual has been employed by a contractor at a DOE facility in a position which requires him to have an access authorization. The Individual was arrested for Driving Under the Influence (DUI) in July 2004 and reported his arrest to the local security office (LSO).<sup>1</sup> The LSO subsequently conducted a Personnel Security Interview (PSI) with the Individual in December 2004 to inquire about the Individual’s DUI arrest. Because the security concerns were not resolved by the PSI, the Individual was referred to a DOE consultant-psychiatrist (the Psychiatrist) for an evaluation concerning his alcohol consumption. The Psychiatrist interviewed the Individual and, in February 2005, issued a psychiatric evaluation report.

In his February 2005 report, the Psychiatrist determined that the Individual used alcohol habitually to excess. DOE Ex. 13 at 8. The Psychiatrist indicated that the Individual’s problem with alcohol was a condition which caused or may cause a significant defect in judgment or reliability. *Id.* at 9.

In June 2005, the DOE informed the Individual that the Psychiatrist’s report, taken together with the Individual’s 2004 DUI arrest and other alcohol-related traffic arrests, constituted derogatory information that created a substantial doubt as to the Individual’s continued eligibility for an access authorization under 10 C.F.R. § 710.8(h) and (j) (Criteria H and J). June 17, 2005 letter from Manager, Personnel Security Division to Individual (Notification Letter). Upon receipt of the Notification Letter, the Individual requested a hearing in this matter. The DOE forwarded the request to the Office of Hearings and Appeals (OHA). The OHA Director appointed me to serve as the hearing officer.

A hearing was held in this matter. At the hearing, the Individual was represented by counsel. The Individual offered his own testimony, as well as that of his Alcoholics Anonymous sponsor, a friend, a softball teammate, his supervisor at work, a probation diversions monitor and a licensed clinical social worker. The local DOE office presented one witness, the Psychiatrist.

## **III. THE HEARING**

The Individual did not dispute the matters giving rise to the Notification Letter. He contends that the security concerns raised by his misuse of alcohol have been mitigated by his rehabilitation from his alcohol problem.

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<sup>1</sup> The record also indicates that the Individual had been arrested two other times, in 1994 and 1989, for driving while intoxicated. See DOE Exhibit (Ex.) 32 at 8; Ex. 36 at 5-13, 27-28; Ex. 37 at 8-18.

**A. The Individual's Friend**

The Individual's friend testified that she had known the Individual for 5 years and has interacted with him on a daily basis.<sup>2</sup> Hearing Transcript (hereinafter "Tr.") at 22. She had also been with him during social situations where alcohol was consumed. Tr. at 9, 11. She stated that in April 2005, the Individual had stopped consuming alcohol beverages. Tr. at 11. About that time, the Individual confided to her that he had been arrested for DWI and that he had been to see the Psychiatrist concerning his alcohol use. Tr. at 12-13, 20. While she believed at first the Individual was in denial about his alcohol problem, she subsequently noticed a significant change in the Individual. Tr. at 16. The Individual began to accept that he needed help with his alcohol problem. Tr. at 13-14, 17. The Individual started to attend a number of programs including AA to treat his alcohol problem. Further, she had driven the individual to a number of these programs. Tr. at 13, 19. She believes that the Individual's attitude and participation in seeking treatment from these programs was sincere and that he was internalizing what he learned from the various programs. Tr. at 14, 18. When she would meet the Individual, he would inform her as to how many AA meetings he had attended. Tr. at 15. Regarding the Individual's effort in attending the treatment programs, she remarked "throughout the whole process I was very impressed with how much he threw himself into doing what he was asked to do." Tr. at 15-16.

**B. Softball Teammate**

The teammate of the Individual testified that they have played on the same softball team sponsored by their church for 10 years. Tr. at 46. He went on to state that the team would typically drink beer after their games but the Individual stopped consuming beers with the team during the current season since March 2005. Tr. at 49, 50. The Individual informed him that he was participating in treatment for an alcohol problem. Tr. at 51. He stated that the Individual had told him that he was trying to take responsibility for his actions and that one way he felt he could demonstrate how seriously he was taking the events that had befallen him was by "attending more sessions than were required by the process." Tr. at 51. The teammate was convinced that the Individual was sincere in his efforts to treat his alcohol problem. Tr. at 52.

**C. The Individual's Supervisor**

The Individual's supervisor testified that the Individual's work performance had been "satisfactory or better." Tr. at 55. He had never seen the Individual impaired by the use of alcohol while at work. Tr. at 55.

**D. The Licensed Clinical Social Worker**

The Licensed Clinical Social Worker (Social Worker) testified as to the Individual's participation in an alcohol treatment program. The Individual sought treatment for his alcohol problem at a treatment facility in July 2005. Tr. at 86; *see* Ex. C at 1. The treatment program consisted of an intensive outpatient program consisting of 14 treatment sessions and an aftercare program of seven sessions for a total of 62 hours of treatment. Tr. at 86-88; *see* Ex. C. The

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<sup>2</sup> The Individual's friend, while a close friend, is not engaged in a romantic relationship with the Individual. Tr. at 15.

Social Worker also reaffirmed her statement contained in a letter to the Individual's attorney (Ex. C) that the Individual had completed all assignments of the program and had a positive attitude throughout treatment. Tr. at 86; *see* Ex. C.

**E. The Individual's Probation Diversions Monitor**

The Individual's Probation Diversions Monitor (Monitor) testified that his job entails monitoring and supervising the progress of individuals with the terms of their probation. Tr. at 92. He is employed by a facility that performs drug and alcohol evaluations. Tr. at 91. He became familiar with the Individual when he was assigned to monitor the Individual's compliance with the terms of his probation following his conviction for the July 2004 DUI. Tr. at 92; *see* Ex. F. The Monitor reported that the Individual was required by his probation to complete 6 to 8 brief intervention counseling sessions. He was also required to attend an eight hour alcohol and drug information school and to attend a victim impact panel. Tr. at 93. Additionally, he was required to be subject to random drug and alcohol testing. All of the tests were negative. Tr. at 94-95. The Monitor stated that the Individual attended AA sessions even though they were not ordered by the court and appeared to be attending the sessions willingly. Tr. at 95.

**F. The Individual's Alcoholics Anonymous Sponsor**

The Individual's Alcoholics Anonymous sponsor (Sponsor) testified that the Individual began to attend regularly AA on June 1, 2005. Tr. at 29. He stated that his function as the Individual's AA sponsor is meet with him and guide him through working through the 12 steps of the AA program. Tr. at 29; *see* Ex. A. The Sponsor believes that the Individual's participation in the program is sincere since he believes that the Individual has seen himself improve. Tr. at 30. The Sponsor stated that the Individual has done everything asked of him in working through the steps of the AA program. Tr. at 31. The Sponsor especially noted that the Individual, with much deliberation and thoroughness, had completed step four of the program in making a searching moral inventory of himself. Tr. at 31, 43. In completing step five, confessing to God and another human being the exact nature of our wrongs, he also willingly confessed to two individuals when asked. Tr. at 31. Regarding this step, the Sponsor asked him to confess to a third person in order that the Individual could more completely contemplate the moral defects that the moral inventory reveals in all persons. Tr. at 43. The Individual complied with that request. The Sponsor also pointed out that the Individual has been leading some of the AA meetings. Tr. at 31. After attending approximately 30 AA meetings with the Individual he believes that the Individual is sincere and his contributions at these meetings "come from the heart and not something that is to pacify me or anyone else." Tr. at 31-32, 43.

**G. The Individual**

The Individual testified that when he met with the Psychiatrist in February 2005 and was informed that he might have an alcohol problem, he was in denial about his alcohol problem. Tr. at 59. However, as a result of being convicted of the July 2004 DUI charge, he was required to go to another evaluation at another facility. That evaluation indicated that he may have problems with decision making after consuming alcohol. *See* Ex. F at 3. After talking with the counselor

at this facility he began to realize that he was in denial about his alcohol problem. Tr. at 62. The Individual went on to testify

But – so, at that point, you know, I lost my case, lost my clearance, and everything was coming down, and I made a comment to someone at work one day, and I said, you know, I’m not in control anymore, you know, God is. At that point I realized that, you know, I got a problem, and I made some mistakes, and I’m going to rectify those mistakes. And through that process, I started seeking out her [the counselor’s] recommendation. I wanted to make sure that I got everything done with the court ASAP, because I didn’t know – I did not know what was going to be required of me, but I knew I had to get all the state and local requirements out of the way as soon as I could.

Tr. at 63.

The Individual then testified as to the program of random breath and urine testing for alcohol that he was required to undergo due to his DWI conviction. Tr. at 66. *See* Ex. E, I. All of the tests were negative for drugs or alcohol. He also described attending a mandatory weekend intervention program for individuals who had been convicted of DWI-type offenses. Ex. F at 4. Pursuant to the court’s order he attended six sessions totaling 9 hours of treatment for alcohol abuse at a treatment facility. Tr. at 67; Ex. D. In April 2005, the Individual began to attend AA. *See* Ex. B; Tr. at 74. While initially going to try to satisfy the court order, he realized that AA could change his life. Tr. at 72. He found the courage to admit he was an alcoholic and learned through AA about the nature of his disease. Tr. 72-73. As of the date of the hearing, the Individual has attended 180 meetings. Tr. at 74. He believes that he will need to keep attending AA meetings for the rest of his life. Tr. at 76. After considering the report that the Psychiatrist issued concerning his alcohol problem, the Individual decided, in addition to AA, to also seek an intensive outpatient alcohol abuse program at a treatment facility. This program entailed attending a series of three hour programs involving group activities concerning each individual’s life situation and education on various topics concerning alcoholism. Tr. 78-79. After completing this program he began to attend the weekly aftercare program at that facility. Tr. at 79.

The Individual elaborated further about what he had learned through his attendance at AA. He especially remembers becoming reconnected to his Catholic faith and prayer through reading the AA “Big Book.” Tr. at 80-81. He also applied the principles he learned at AA to enable him to have a “heartfelt” conversation with his mother during a difficult period where they had to commit the Individual’s father to a nursing home. Tr. at 81. He has also been able to share his experiences with other people. Tr. at 82.

The Individual also described his current support system. In addition to his new friends in AA, the Individual has two daughters with whom he feels free to discuss issues in his life. Tr. at 82, 102. Additionally, he has a good relationship with the friend that testified on his behalf. Tr. at 82. All of these people are very supportive of his participation in AA. Tr. at 82. If he was confronted with stress and felt that he wanted to consume alcohol, the Individual stated that he would first call his sponsor to discuss the situation. Additionally, he would discuss the stressful situation with his AA group. Tr. at 102.

#### **D. The Psychiatrist**

The Psychiatrist gave testimony after listening to all the testimony at the hearing. In his initial testimony, the Psychiatrist stated that, after his evaluation of the Individual, determining the extent of the Individual's alcohol problem was difficult because of the extent of the Individual's denial of his alcohol problem. Tr. at 104. In his report, the Psychiatrist recommended treatment with 150 hours of AA attendance, including a sponsor and abstinence for a year, plus abstinence for an additional year to demonstrate rehabilitation or reformation. Tr. at 104. After hearing the testimony at the hearing, the Psychiatrist stated that there was a marked change in the Individual's attitude. Tr. at 105. In the Psychiatrist's opinion the Individual is no longer in denial about his alcohol problem and that he has "embraced his problem." Tr. at 105. The Psychiatrist noted that the Individual, at the date of the hearing, had over 290 hours of treatment (including AA attendance) for his alcohol problem, significantly exceeding the recommendation he had made in his report. He found it very significant that the Individual had continued in therapy and treatment over and beyond what had been required. Tr. at 106. The Psychiatrist also found the testimony of the Social Worker significant in that it provided evidence that the Individual had taken his alcohol problem seriously. Tr. at 107. After reviewing all of the testimony and evidence, the Psychiatrist went on to give an updated opinion concerning whether the Individual was now rehabilitated and reformed from his alcohol problems. The Psychiatrist testified that he now believes that, within medical certainty, the Individual is rehabilitated and reformed from his alcohol problem. Tr. at 110-11.

#### **IV. STANDARD OF REVIEW**

Under Part 710, the DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). After such derogatory information has been received and a question concerning an individual's eligibility to hold an access authorization has been raised, the burden shifts to the individual to prove that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(a).

Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. In considering derogatory information, the DOE considers various factors including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). The ultimate decision concerning eligibility is a comprehensive, common sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a).

## V. ANALYSIS

### A. Security Concern

The derogatory information concerning Criteria H and J centers on the Individual's alcohol problem. Criterion H concerns conduct tending to show that the Individual has "an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Criterion J concerns conduct indicating that the Individual has "been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

It is beyond dispute that an individual suffering from an alcohol problem raises security concerns. *See, e.g., Personnel Security Hearing, Case No. VSO-0243*, 27 DOE ¶ 82,808 (2002). Given the Psychiatrist's finding that the Individual was a user of alcohol habitually to excess, the local security office had more than sufficient grounds to invoke Criterion J. With regard to Criterion H, the Psychiatrist opined that the Individual suffered from a mental illness or condition that could cause a defect in his judgment and reliability, specifically the Individual's misuse of alcohol. Consequently, I also find that the local security office had sufficient ground to invoke Criterion H.<sup>3</sup> Thus, the only issue remaining is whether these security concerns have been resolved.

### B. Mitigating Factors

All of the security concerns raised in this case concern the Individual's problems with alcohol consumption. As mitigation, the Individual asserts that he is now rehabilitated from his past of alcohol misuse. The record in this matter indicates that the Individual has been abstinent from alcohol since March 2005 for a period of abstinence of approximately nine months as of the date of this hearing in December 2005. More significant is the fundamental change in the Individual's insight as to his alcohol problem. His testimony and the testimony of the witnesses convince me that for the first time the Individual fully realizes that he has a serious alcohol problem. Further, I believe that the Individual has earnestly sought to treat this problem by seeking and completing an intensive outpatient treatment for his problem. This is especially significant since this treatment was beyond that required by the court pursuant to his DWI conviction. The Individual's participation in AA also gives credence to the Individual's efforts at rehabilitation and his record of attendance is impressive. More importantly, the Individual's testimony indicates that he has not just attended AA meetings, but that he also internalized the message that AA teaches about the nature of alcohol disorders.

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<sup>3</sup> The Psychiatrist declined to specifically diagnose the Individual with one of the illnesses described in the DSM-IV-TR. In his report he notes a study that indicates that males who have been arrested for two DWIs (Driving while Intoxicated) have a 90% chance of having a "lifetime alcohol use disorder" such as alcohol abuse or dependence. DOE Ex. 13 at 8. He also cites another study indicating that individuals with three or more DWI arrests have essentially a 100% chance of being alcoholic. *Id.* The record in the present case indicates that the Individual has three DUI arrests. For the purposes of this decision, I will consider the Psychiatrist's finding that the Individual is a user of alcohol "habitually to excess" as a disease or condition under Criterion H.

I am also impressed by the testimony of the Individual's sponsor. His testimony confirms the effort the Individual has put in trying to effectively and meaningfully incorporate AA's 12 steps into his life. I believe that the sponsor's own experience would enable him to determine whether someone is going to AA to satisfy someone else or is going in order to truly seek a change and to remove alcohol from his life. In the case of the Individual, the sponsor believes that the Individual is sincere in his participation in AA. Tr. at 30. The testimony of the Individual's friend also supports my finding that the Individual has made a fundamental change in his life.

Lastly, I am convinced by the testimony of the Psychiatrist who made the original findings concerning the Individual's alcohol problem. The Psychiatrist had an opportunity to view each of the witnesses who testified in this matter and was able to evaluate new information concerning the Individual's efforts at rehabilitation. The Psychiatrist testimony confirms the Individual's near 180-degree change with regard to his acceptance of his problem. After reviewing the treatment program that the Individual has completed, the Psychiatrist was able to testify that in his professional opinion the Individual is rehabilitated and reformed from his alcohol problem.

While the Individual has had only a nine month period of abstinence as of the date of the hearing, I find that there is sufficient evidence before me that the Individual has rehabilitated himself from his alcohol problem and thus the risk of a relapse is low enough that the security concerns raised by his prior habitual use of alcohol to excess have been mitigated.

## **VI. CONCLUSION**

As explained above, I find that the security concerns related to the Individual's prior history of alcohol misuse have been mitigated. Therefore, I conclude that restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Consequently, the Individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.  
Hearing Officer  
Office of Hearings and Appeals

Date: April 11, 2006